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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO SALVADOR FONSECA,

Defendant and Appellant.

E055250

(Super.Ct.No. RIF10003967)

OPINION

APPEAL from the Superior Court of Riverside County. Bernard Schwartz, Judge.
Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On December 1, 2010, an information charged defendant and appellant Ricardo Salvador Fonseca with discharge of a firearm in violation of Penal Code section 246.3 (count 1); and possession of a controlled substance under Health and Safety Code section 11350, subdivision (a) (count 2). The information also alleged that defendant personally used a firearm under Penal Code sections 667 and 1192.7, subdivision (c)(8).

Defendant pled not guilty and denied the special allegation. On the first day of trial, defendant pled guilty to one count of possession of a controlled substance. Thereafter, the jury convicted defendant of discharge of a firearm. The court found true that defendant personally used a firearm.

The trial court sentenced defendant to the midterm of two years for discharge of a firearm, plus a concurrent two years for possession of a controlled substance, for a total sentence of two years. In addition, the court ordered defendant to pay \$200 restitution under Penal Code section 1202.4, subdivision (b), and stayed a \$200 parole restitution fine under Penal Code section 1202.45. Defendant was awarded a total of 109 days of presentence credit.

On December 16, 2011, defendant filed a timely notice of appeal.

STATEMENT OF FACTS

On July 31, 2010, around 9:00 p.m., Ronald Butterfield, Jevon Shepard, Lamar Adams, William Dees, and Robert Moore were walking down Dracaea Avenue in Moreno Valley when a Hispanic male came out of a house located on Dracaea Street and

approached them. The man aggressively yelled, “Southside.” The group of young men stopped and words were exchanged. Then more people came out of the garage of the house and joined in the heated verbal exchange. The altercation never became physical, although it was escalating in that direction. Butterfield tried to break up the argument. Harold Wafer, who had arrived at the house in the middle of the altercation, also tried to break up the argument.

During the argument, another Hispanic male came out of the garage, approached an SUV parked near the residence, and entered the vehicle. Moore believed that the male was about to grab a weapon so he went over to the SUV and yelled out, “What you got.” Moore then saw the person raise his hand holding a silver revolver and fire one shot in the air. Moore, however, never saw the shooter’s face. Butterfield saw someone hanging out of the car window holding a gun in the air and yell, “What’s up? Do you want to F with me?” Everyone scattered after the first shot, and then four more shots were heard.

While Detective Colmer and his partner Deputy Belgarde were conducting a traffic stop down the street from the altercation, they saw Dees run by. Dees yelled to the officers that he had just been shot at and kept on running. Shortly after, the officers saw Adams, Butterfield and Shepard run by, and stopped them. Detective Colmer questioned them about the shooting, and they identified the house on Dracaea Avenue as the house where the incident occurred. Detective Colmer then heard a radio broadcast regarding shots fired in that area. Other deputies responded to the area to surround the house.

Wafer, who had run back inside the house after the first shot was fired, came out of the house and was detained.

All the men from the group except Dees were transported to the police station and questioned about the incident. One of the men identified the shooter as someone he had gone to school with named Ricardo. Detective Colmer pulled up all photos with the name “Ricardo” from the Moreno Valley Unified School District database. Butterfield identified defendant as the shooter. Deputy Esquibel obtained a search warrant and several items were recovered from the house on Dracaea Avenue. Deputy Esquibel searched the garage and recovered a Winchester box with a foam tray inside that contained .45-caliber bullets and paperwork with defendant’s name on it. Deputy Acosta recovered mail addressed to defendant and defendant’s birth certificate from the hall closet. Also, five expended shell casings for a Winchester .45-caliber automatic gun were recovered from the scene. Approximately four weeks after the incident, Detective Colmer interviewed Dees, who also identified defendant from a photo six-pack as the shooter.¹

Subsequently, defendant was arrested. During questioning, defendant asked if he was being charged with shooting at the house and denied ever being there. Defendant also stated, “You did not find any gun on me. You did not find a bullet. Was it [the homeowner’s] family saying it was me? Was it those . . . saying it was me or what?”

¹ Dees testified that, during his interview, he only stated that he knew defendant from middle school, not that he was the shooter.

At trial, Detective Colmer testified about gang membership and all the gangs in Moreno Valley, and how Dracaea Avenue is not home to any one particular gang. The detective explained that “Southside” could mean either Southside Maniacs or gang members that associate with the Mexican mafia.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.